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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

B5

FILE:

Office: NEBRASKA SERVICE CENTER

Date: **FEB 02 2011**

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mary Rhew

2 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a transportation engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's determination that the petitioner has not established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. degree in Structural Engineering [REDACTED]. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, bridge engineering, and that the proposed benefits of his work, earthquake resistant bridges, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet

the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner earned his Ph.D. in 1997. He has submitted evidence of over ten years of experience as an engineer or engineering professor as of the date of filing, October 27, 2008. With regard to experience, the regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(F). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on the petitioner's experience, while relevant, are not dispositive to the matter at hand. *Id.* at 222.

The petitioner is licensed as a professional engineer in civil engineering by the California Board for Professional Engineers and Land Surveyors. Once again, a license is one type of evidence that may be submitted as evidence of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(C). As stated above, exceptional ability is a classification that normally requires an approved alien employment certification. Section 203(b)(2) of the Act; *NYSDOT*, 22 I&N Dec. at 218. Thus, the petitioner's license is not dispositive of whether the alien employment certification process should be waived in the national interest. *NYSDOT*, 22 I&N Dec. at 222.

The petitioner submitted evidence of nine articles and seven conference presentations. The petitioner was also a guest speaker "of Special Conference of Local Chapters of Architectural Institute of Korea" according to an uncertified translation. Foreign language documents must be accompanied by a full certified translation. 8 C.F.R. § 103.2(b)(3). Thus, we cannot consider this foreign language document. While the petitioner's articles and presentations demonstrate that the petitioner has disseminated his work, they are not, by themselves, evidence of the ultimate influence of that work. In response to the director's request for additional evidence, the petitioner submitted a foreign language certificate that, according to the translation, certifies that the [REDACTED] recognized the petitioner's 1996 presentation as the best presentation. Once again, the translation is not certified and, thus, does not comply with the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, while the institute may have recognized the petitioner's work as promising when he presented it, at issue is the ultimate impact of that work after dissemination in the field.

The citations submitted reveal that one author cited the petitioner's 2004 presentation in two separate articles. In addition, the petitioner's 1994, 1997 and 1998 articles have each garnered a single citation.

The petitioner's supervisor at [REDACTED] twice cited a 2003 article that he coauthored with the petitioner. Counsel notes that [REDACTED] two articles themselves have garnered what counsel characterizes as "indirect citations."

Self-citations cannot demonstrate the petitioner's wider influence in the field. The number of independent citations is minimal. The record does not establish that the articles citing [REDACTED] articles cite his articles for concepts that originate with the petitioner's work rather than the independent research [REDACTED] reported. Counsel has not explained why the authors of these "indirect" citations did not directly cite the petitioner's work if that work is indeed relevant to the authors' work. Thus, "indirect" citations are simply too far removed from the petitioner's own work to have evidentiary value. Significantly, however, one of the "indirect" citations has itself garnered 77 citations. Thus, the petitioner's field is not a field that generates few citations.

The petitioner submitted a certificate from the University of Michigan in "recognition" of the petitioner's postdoctoral training at that institution. Rather than recognizing the significance of the petitioner's research there, the university issued the certificate to "certify" that the petitioner successfully completed his postdoctoral training.

The petitioner submitted a foreign language certificate. The entire uncertified translation states: "Recognition for Member of Committee for Approval of Special Buildings from Kumi City in Korea on February 2001 (in Korean)." This translation is not a full certified translation as required under 8 C.F.R. § 103.2(b)(3). Thus, the document has no evidentiary value. The record contains no letters from anyone in Korea with first hand knowledge of the petitioner's committee membership explaining the significance of the membership and what duties the position involved.

[REDACTED] asserts that he referred to the petitioner's work on several occasions. The only citations by [REDACTED] are those that cite an article he coauthored with the petitioner. These do not demonstrate the petitioner's influence beyond his immediate circle of collaborators. [REDACTED] explains that at the University of Michigan, the petitioner was involved in two research projects: the development of highly damage-tolerant earthquake-resistant structural walls and the use of steel double channel built-up members in ductile segments of Special Truss Moment Frames (STMFs). [REDACTED] asserts that the petitioner's contributions to these projects were essential to their success and predicts that this work "will lead to an increasing use of STMFs in regions of high seismicity." At issue, however, is whether the petitioner has already demonstrated a track record of success with some degree of influence on the field as a whole.

The petitioner joined Purdue University as a postdoctoral research associate under the supervision of [REDACTED] in 2003. [REDACTED] asserts that the petitioner was the primary researcher on a \$600,000 National Academy of Sciences (NAS) funded study. According to [REDACTED] the petitioner's primary responsibility for this study involved an experimental program dealing with the bond strength of mild reinforcement in high strength concrete and strand surface characterization tests. [REDACTED] further explains that the petitioner also analyzed the data and produced a report and two

technical papers for the *Journal of Structural Engineering*. [REDACTED] acknowledges, however, that the journal had yet to publish this work as of the date of filing. [REDACTED] praises the organization of the petitioner's work and opines that it is "going to make a significant impact on US practice" as American Association State Highway Transportation Officials (AASHTO) are "in the process" of adopting his results.

[REDACTED] another [REDACTED], asserts that [REDACTED] the petitioner was "involved in research directed at improving the performance of concrete shear walls subjected to earthquake forces through the use of a novel technique that includes the use of high performance fiber reinforced concrete." [REDACTED] asserts that the petitioner made "significant contributions" to this work but does not explain how those contributions are influencing the field. [REDACTED] continues that the petitioner's findings "have appeared in top ranked peer-reviewed journals." First, the record does not establish that the petitioner has published any of the work he performed while at Purdue University. Moreover, as stated above, dissemination alone does not demonstrate the ultimate impact of the published work once available in the field.

[REDACTED] also asserts that the petitioner developed "new design methods for the connection of steel and concrete composite structures" as part of an initiative between the United States and Japan. The record, however, contains no first-hand accounts of the petitioner's role in this initiative or its ultimate impact in the field.

[REDACTED] Chair of the [REDACTED] (Caltrans), opines that the petitioner "will continue to make invaluable contribution to the bridge engineering community in Caltrans and of the United States." Mr. [REDACTED] does not address the petitioner's accomplishments at Caltrans. Rather, [REDACTED] limits his discussion to the petitioner's previous work. Specifically, [REDACTED] asserts that in 2005 he read three of the petitioner's articles that presented valuable results. [REDACTED] speculates that these findings "would help us design the integral joint connections between the steel girders and concrete bent caps in bridge structures." [REDACTED] does not suggest that Caltrans has or is currently pursuing designs based on the petitioner's 2005 research. In addition, [REDACTED] notes that petitioner's research at Purdue University resulted in "proposed modifications" [REDACTED] for bond reinforcement to higher compressive strength. [REDACTED] does not indicate the status of this proposal.

[REDACTED] discusses the importance of the petitioner's area of work and the need for his expertise. As stated above, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

██████████ an assistant professor at California State ██████████ asserts that he became aware of the petitioner through a 2006 paper. ██████████ further asserts that he is also familiar with another of the petitioner's articles and that it "paved the way for additional research that ██████████ will be conducting with one of [his] graduate students." While the petitioner's research is clearly applicable in the field, this one example of projected application of the petitioner's work locally in California is not evidence of the petitioner's influence in the field as a whole.

In response to the director's request for evidence as to the status of the petitioner's proposal to ██████████, the petitioner submitted an email from ██████████ an engineer with the Washington State Department of Transportation. In response to ██████████ question as to the status of the implementation of the findings "with regard to Bond and Development length of Strand and mild reinforcement into ██████████," ██████████ responded there are two code change recommendations, one on development and splice of reinforcement and the other on transfer and development length of pre-stressing strands and that these recommendations "could" be 2010 ballot items "if all questions and concerns are addressed." ██████████ further noted that the recommendation on the transfer and development length of pre-stressing strands "has raised some questions and comments on the bond condition, effects of shorter transfer length on design and removal of stress in prestressing strands from the equations." It is not clear from this email that the recommendations are primarily based on the petitioner's work and, even if they are, that they will be adopted as presented. The petitioner must establish eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). As of that date, the petitioner's recommendations had not been adopted and, in fact, there is no evidence that they were subsequently adopted in a form similar to what the petitioner proposed.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158,

165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of expertise without providing specific examples of how those innovations have already influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.¹ The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

¹ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).